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# All Things Equal: Unintended Consequences And Allegedly Misrepresented Statistics

Joshua L. Plager

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# All Things Equal: Unintended Consequences and Allegedly Misrepresented Statistics

JOSHUA L. PLAGER\*

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I am \$206,294.11 in debt. At first blush, my decision to enter law school, like many would-be law students' decisions, seemed profitable. Pay more than \$150,000 now and recoup my original investment in several years. Once the borrowed funds are repaid, earnings are mine to keep and this income represents a positive return on investment.<sup>1</sup> If salary data or the employment statistics presented to potential students do not fairly represent reality, however, the mechanism by which they decide whether or not to pursue a degree has been compromised.<sup>2</sup>

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1. The "investment," of course, is the law degree. As with any other asset, it is crucial to determine whether pursuing additional education or training for a new career is economically wise. See, e.g., Ali Velshi, *What's the ROI on Investing in Y.O.U.?*, MONEY, Nov. 2011, at 34. Velshi explains that the "key measurement in deciding where to put [one's] money is the expected ROI, or 'return on investment.'" *Id.* This ROI can be determined by comparing the costs—of training; of financing and making interest payments; and of forgoing salary while earning the additional credential(s)—with the expected future salary, impliedly augmented by the new degree or training. See *id.*

2. See, e.g., *id.* While the determination of ROI on additional education is "based on a simple calculation you can replicate," the conclusion—that is, whether it makes economic sense to pursue the degree—is only as accurate as the data on which the conclusion is based. See *id.* Less-than-accurate data entered into the ROI equation will produce less-than-accurate results about future earnings and income potential. See *id.* The recent, and grim, reality is that "[m]any

Whether one comes directly from an undergraduate program or seeks additional education in furtherance of a career change, if the data upon which one bases one's decision is misstated, it follows that decisions made in reliance on this data may be inaccurate. The potential law student's ability to make a rational<sup>3</sup> and informed decision is jeopardized<sup>4</sup> by the reliance upon erroneous information.<sup>5</sup>

Likewise, the source of data is as important as its veracity. Much of the data related to law schools—whether about costs, salaries, or percentage of students employed after graduation—is reported by the schools themselves.<sup>6</sup> In a world where law schools have a pecuniary incentive to paint more promising a picture of potential than perhaps exists, one should carefully consider the accuracy of these self-reported

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prospective law students are already familiar with the steep price of a legal education. What many do not know, however, is that these costs often exceed the expected return on their investment in the job market." ABA COMMISSION ON THE IMPACT OF THE ECONOMIC CRISES ON THE PROFESSION AND LEGAL NEEDS, THE VALUE PROPOSITION OF ATTENDING LAW SCHOOL (2009), available at <http://www.americanbar.org/content/dam/aba/migrated/lstd/legaled/value.authcheckdam.pdf> [hereinafter VALUE PROPOSITION]. The result is that, "[a]ll too often, students who bank on reaping a positive financial return from law school lose out." *Id.* at Part III.

3. Economists use the phrase *rational expectations* to "describe how people rationally change their current behavior in anticipation of future events." SEAN MASAKI FLYNN, *ECONOMICS FOR DUMMIES* 133 (2005). Here, "current behavior" is deciding whether or not to pursue an advanced degree, and "anticipation of future events" is the expected corresponding increase in wages associated with the decision to pursue, and the successful completion of, the degree. *Cf.* STEVEN E. LANDSBURG, *MORE SEX IS SAFER SEX: THE UNCONVENTIONAL WISDOM OF ECONOMICS* 3 (2007) ("Economics is largely about the surprising and sometimes tragic consequences of rational behavior.").

4. This term cuts both ways: One's decision may be jeopardized because reported salaries or post-graduate employment statistics are too high (causing unrealistic expectations about future income potential, and potentially clouding one's ability to make an informed decision) or too low (in which case one would actually pay less for, or earn more as a result of, earning the graduate degree). In either situation, the point is that inaccurate data yield inaccurate decision-making.

5. Factors unrelated to cost and potential future income may also play a part in the decision-making process. *See generally* RICHARD NELSON BOLLES, *WHAT COLOR IS YOUR PARACHUTE?* (2006). In this "practical manual for job-hunters and career-changers," Bolles suggests, for example, that "geographical preference" or "finding more purpose" may be factors that influence one's decision. *See id.* at 70–76; *see also* VALUE PROPOSITION, *supra* note 2 ("[M]any factors may influence one's decisions about whether and where to attend law school . . ."). This Note focuses on the economically driven aspect of student decision-making.

6. *See, e.g.,* Paul Campos, *How Law Schools Completely Misrepresent Their Job Numbers: A Law School Professor Investigates*, THE NEW REPUBLIC (Apr. 25, 2011), <http://www.tnr.com/article/87251/law-school-employment-harvard-yale-georgetown> ("This month, thousands of ambitious young people are asking themselves the same question: Does it make sense to invest \$100,000 to \$250,000, and the next three years of my life, to become officially qualified to work as a lawyer? For most people considering law school, this question is hardly an easy one. Law schools, however, make it much harder than it needs to be by publishing misleading data about their employment statistics. Many law schools all but explicitly promise that, within a few months of graduation, practically all their graduates will obtain jobs as lawyers, by trumpeting employment figures of 95 percent, 97 percent, and even 99.8 percent. The truth is that less than half will.").

statistics.<sup>7</sup> At bottom, a decision-maker<sup>8</sup> should be entitled to rely upon the data presented to him; he must trust those with the power to disseminate information relevant to his decision-making. That is,

Chieftans must be credible. Their words and actions must be believable to both friend and foe. They must be trusted to have the intelligence and integrity to provide correct information. Leaders lacking in credibility will not gain proper influence and are to be hastily removed from positions of responsibility, for they cannot be trusted.<sup>9</sup>

Welcome to the world of law schools and allegedly misrepresented statistics.

## I. INTRODUCTION

Litigation against law schools on grounds of misrepresentation is in vogue.<sup>10</sup> Though the theory underlying each suit may be premised on purported violations of state statute,<sup>11</sup> at the heart of these complaints is an alleged or implied violation of the American Bar Association's Standards for Approval of Law Schools.<sup>12</sup> Standard 509(a) states: "A law school shall publish basic consumer information. The information shall be published in a fair and accurate manner reflective of actual practice."<sup>13</sup> The ABA has interpreted this standard as requiring law schools to "fairly and accurately . . . report basic consumer information whenever and wherever that information is reported or published."<sup>14</sup> As

7. Certainly, an astute patient would question the efficacy of a medical drug study in which a hospital both reports, and concurrently stands to benefit financially from, positive results related to the study. This is no novel or cynical concept: Institutions exist, by and large, to generate revenue. See, e.g., FLYNN, *supra* note 3, at 193 ("Above all, firms like to maximize profits.").

8. That is, the potential law student.

9. WESS ROBERTS, *LEADERSHIP SECRETS OF ATTILA THE HUN* 20–21 (1987).

10. When I began writing this Note in the winter of 2011, only a handful of suits against schools had been filed. There are currently no fewer than fourteen law schools named as defendants in class action proceedings. See *Filed Complaints*, LAW OFFICES OF DAVID ANZISKA, [http://www.anziskalaw.com/Filed\\_Complaints.html](http://www.anziskalaw.com/Filed_Complaints.html) (last visited Jan. 27, 2013) (with links to various complaints).

11. E.g., N.Y. GEN. BUS. LAW § 349 (McKinney 2011) (Deceptive Acts and Practices Unlawful); CAL. BUS. & PROF. CODE § 17200 (West 2011) (Unfair Competition; Prohibited Activities). See Amended Complaint and Demand for Jury Trial at 50, *Gomez-Jimenez v. N.Y. Law Sch.*, No. 652226/2011 (N.Y. Sup. Ct. Nov. 21, 2011), available at [http://www.anziskalaw.com/uploads/Filed\\_Amended\\_New\\_York\\_Law\\_School\\_Complaint.pdf](http://www.anziskalaw.com/uploads/Filed_Amended_New_York_Law_School_Complaint.pdf); Complaint and Demand for Jury Trial at 5, *Chaves v. Cal. W. Sch. Of Law*, No. 37-2012-00091627-CU-BT-CTL (Cal. Super. Ct. Feb. 1, 2012), available at [http://www.anziskalaw.com/uploads/Filed\\_California\\_Western\\_Complaint.pdf](http://www.anziskalaw.com/uploads/Filed_California_Western_Complaint.pdf).

12. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 509(a) (2011–2012), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2011\\_2012\\_standards\\_and\\_rules\\_for\\_web.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_standards_and_rules_for_web.authcheckdam.pdf) [hereinafter ABA STANDARDS FOR APPROVAL] (Basic Consumer Information).

13. *Id.*

14. *Id.*, *Interpretation 509-4*. This interpretation also holds that, even if a law school

becomes evident through reading the dozen-plus complaints,<sup>15</sup> law students feel misled or lied to, and in many cases, both. Alleged improper conduct runs the gamut from negligent misrepresentation<sup>16</sup> to actual fraud.<sup>17</sup>

Plaintiff Anna Alaburda's allegations against her former law school are typical of such class action complaints.<sup>18</sup> A 2008 graduate of Thomas Jefferson School of Law ("TJSL"), she claims that her lawsuit arises out of "the fraudulent and deceptive business practices" of TJSL.<sup>19</sup> She alleges that the school "churned out . . . graduates, many of whom have little or no hope of working as attorneys at any point in their careers."<sup>20</sup> She asserts that TJSL misrepresented its post-graduation employment statistics and misled students "by advertising post-graduation employment rates that typically exceed 70 percent, and that topped 90 percent in 2010."<sup>21</sup> She further alleges that

TJSL . . . conceals the fact that these figures include part time employment, as well as non law-related positions (i.e., a TJSL student will be considered employed after graduation if he works as a part time waiter or convenience store clerk). Prospective students are led to believe that they will be hired as full time attorneys when they graduate, even though that is frequently not the case.<sup>22</sup>

Alaburda insists that "[t]here is no reason for TJSL to present a figure concerning the percentage of graduates who are employed *in any position* (including part time and non-law-related positions) other than to mislead prospective students."<sup>23</sup> She claims she "graduated from TJSL

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participates in an ABA-designated publication for disseminating consumer information, this fact "does not excuse a school from the obligation to report fairly and accurately all basic consumer information published in other places or for other purposes." *Id.*

15. See *Filed Complaints*, *supra* note 10.

16. A little neglect may breed great mischief; for want of a nail the shoe was lost; for want of a shoe the horse was lost; and for want of a horse the rider was lost, being overtaken and slain by the enemy; all for want of a little care about a horse shoe nail.

BENJAMIN FRANKLIN, *THE WAY TO WEALTH* 18 (Applewood Books 1986) (1758) (internal quotation marks omitted).

17. "Lying" is the second vice. *Id.* at 25. The first, writes Franklin, is "running in debt." See *id.* at 24-25 ("But ah! think what you do when you run into debt; you give to another power over your liberty. If you cannot pay on time, you will be ashamed to see your creditor; you will be in fear when you speak to him; you will make poor pitiful sneaking excuses, and by degrees, come to lose your veracity . . .").

18. See generally Complaint and Demand for Jury Trial, *Alaburda v. Thomas Jefferson Sch. of Law*, No. 37-2011-00091898-CU-FR-CTL (Cal. Super. Ct. May 26, 2011), available at [http://lawschooltransparency.com/lawsuits/Alaburda\\_v\\_TJSL-Complaint.pdf](http://lawschooltransparency.com/lawsuits/Alaburda_v_TJSL-Complaint.pdf).

19. *Id.* at 2.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

. . . with more than \$150,000 in student loan debt” and that, since graduation, she “has been unable to secure a full time job as an attorney that pays more than non-legal jobs that are available to her, even though she graduated with honors from TJSL.”<sup>24</sup> Alaburda states she “would not have attended TJSL and incurred more than \$150,000 in school loans if she knew the truth about her job prospects upon graduation.”<sup>25</sup> She concludes the first part<sup>26</sup> of her Complaint as follows:

At the end of the day, TJSL is more concerned with raking in millions of dollars in tuition and fees than educating and training its students. The disservice TJSL is doing to its students and society generally is readily apparent. Many TJSL graduates will never be offered work as attorneys or otherwise be in a position to profit from their law school education. And they will be forced to repay hundreds of thousands of dollars in school loans that are nearly impossible to discharge, even in bankruptcy.<sup>27</sup>

The lawsuit “seeks damages and restitution exceeding \$50,000,000 and injunctive relief stemming from TJSL’s fraudulent and unlawful conduct.”<sup>28</sup>

In its demurrer, TJSL characterizes Alaburda as suffering from “buyer’s remorse.”<sup>29</sup> The school asserts it is a “non-profit institution with the stated mission of providing an outstanding legal education to a diverse student body,” and claims that Alaburda

does not deny that she received such an education, only that the job market in 2008 was not what she understood it to be when she read [*U.S. News & World Report*] in 2003, when she applied to TJSL in 2004, or when she matriculated at TJSL in September 2005.<sup>30</sup>

TJSL contends Alaburda did not plead “any specifics as to TJSL’s factual data being false” and “she made no effort to ascertain her actual employment prospects prior to hitting the job market post-graduation, only to then discover no full-time legal position awaiting her.”<sup>31</sup> TJSL

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24. *Id.* at 2–3.

25. *Id.* at 3.

26. That is, *Nature of the Action*. See *id.* at 2–3.

27. *Id.* at 3; accord ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *THE LAW OF DEBTORS AND CREDITORS* 242 (6th ed. 2009) (“One particular debt that has been singled out for special protection against discharge in bankruptcy is the student loan. While most people think of soon-to-be-rich doctors and lawyers waltzing into bankruptcy to discharge the debts they incurred through college and professional school, many people are struggling with loans incurred to acquire skills that do not pay nearly so well.”).

28. Complaint and Demand for Jury Trial, *supra* note 18, at 3.

29. Memorandum of Points and Authorities in Support of Defendant Thomas Jefferson School of Law’s Demurrer to Plaintiff’s First Amended Complaint at 1, *Alaburda v. Thomas Jefferson Sch. of Law*, No. 37-2011-00091898-CU-FR-CTL (Cal. Super. Ct. Nov. 18, 2011).

30. *Id.*

31. *Id.*

maintains that Alaburda provides “no facts to support her conclusory allegations that TJSJL provided any ‘false’ information to [*U.S. News & World Report*,]”<sup>32</sup> and notes that these allegations are “based purely ‘on information and belief.’”<sup>33</sup> Thus, TJSJL argues, her claim must fail as a matter of law “because California law is clear that fraud-based claims must be pled with specificity and not on ‘information and belief’ alone.”<sup>34</sup>

TJSJL further insists that Alaburda failed to “adequately allege that the employment numbers . . . are ‘misleading.’”<sup>35</sup> The school states:

Plaintiff claims she interpreted [*U.S. News & World Report*’s] data regarding the “percent [of students] employed nine months after graduation” as referring to full-time lawyer positions. However, she neglects to mention that directly adjacent to these figures, the [*U.S. News & World Report*] also lists each school’s bar passage rate. For all relevant years, the bar passage rate at TJSJL was *lower* (and often *significantly lower*) than the reported “percent employed nine months after graduation.” Because bar admission is a prerequisite to practicing law, any reasonable reader would immediately recognize that the [*U.S. News & World Report*] employment figures must include non-lawyer positions.<sup>36</sup>

In support of its claim that it did not misrepresent employment statistics, TJSJL alleges:

First, nowhere does the [*U.S. News & World Report*] state that the “percent employed” figure refers to full-time lawyer positions. It merely states the percent of students “employed” nine months after graduation. . . . Second, in the column directly to the right of the employment statistics, the [*U.S. News & World Report*] publishes each school’s bar passage rate. For every year since 2004, the reported bar passage rate at TJSJL was lower—and often significantly lower—than the percentage of graduates reported as “employed nine months after graduation[.]”<sup>37</sup>

Immediately following in the demurrer is a table with the headings, “Percent Employed 9 Months After Graduation”; “Bar Passage Rate”;

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32. *Id.* at 2.

33. *Id.*

34. *Id.* (citing *Woodring v. Basso*, 195 Cal. App. 2d 459, 464–65 (1961)).

35. *Id.*

36. *Id.* (internal citations omitted). TJSJL continued: “Furthermore, even if the ‘percent employed’ figures in [*U.S. News & World Report*] could somehow be construed as ‘misleading,’ TJSJL cannot be liable for them. It is well settled that no liability can attach for another’s alleged misrepresentations unless the defendant has ‘unbridled’ control over the statements.” *Id.* (citing *Emery v. Visa Int’l Serv. Ass’n*, 95 Cal. App. 4th 952, 960 (2002)). TJSJL claims that Alaburda “does not allege that TJSJL had *any* control – let alone ‘unbridled’ control – over how [*U.S. News & World Report*] computes and reports its employment statistics.” *Id.*

37. *Id.* at 6 (internal citations omitted).

and “Difference = Percent Who Could Not Have Been Employed as Attorneys.”<sup>38</sup> TJSL explains:

It is well known that only licensed attorneys can practice law. Thus, any difference between the “percent employed” and “bar passage” figures *must* reflect employment in non-attorney positions. Plaintiff’s alleged failure, as a college educated, prospective law student, to consider the obvious implications of a bar passage rate that is significantly lower than the “percent employed” rate does not save her claims.<sup>39</sup>

TJSL insists that “no ‘reasonable consumer’ could interpret the ‘percent employed’ figure as reflecting full-time attorney positions” and again claims that “[n]owhere does the [*U.S. News & World Report*] indicate that the data reflects full-time attorney positions.”<sup>40</sup> The school concludes its argument in support of the proposition that Alaburda has not, and cannot, adequately plead that TJSL provided any misleading information as follows: “At bottom, no reasonable consumer, much less a college educated, prospective law student consumer, could read the [*U.S. News & World Report*] in the manner alleged by plaintiff. Accordingly, TJSL’s demurrer should be sustained.”<sup>41</sup>

This Note argues that these lawsuits are only the visible tip of a veiled iceberg. It posits that a fundamental problem in American law schools is that they act myopically, remaining fixated on short-term placement and profitability while ignoring or remaining blind to systemic issues within our legal education system. This Note argues that this is an unsustainable position: Our legal economy is, and will remain depressed if we do not adapt to a new economic reality<sup>42</sup>—and the starting point for this recovery is in disseminating to potential students honest and accurate statistics related to borrowing, salary, and job prospects for new graduates.

Part II will address law school generally: It will consider why we choose to attend law school in the first place; it will explain that law school is, at bottom, a business; and it will describe ongoing changes to the industry that is legal education. Part III will address economics and the economy, with a specific focus on the market for labor. It will urge that we look toward the struggling legal economy and the causes of

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38. See *id.* at 7.

39. *Id.* (footnote omitted).

40. See *id.* at 8.

41. *Id.* As no fewer than fourteen class action lawsuits with seventy named plaintiffs suggest, apparently many students *did* “read the [*U.S. News & World Report*] in the manner alleged by [Alaburda,]” TJSL’s contention notwithstanding. *Id.*

42. “As is usually the case, legal theory lagged well behind onrushing reality.” RONALD A. CASS ET AL., *ADMINISTRATIVE LAW: CASES AND MATERIALS* 4 (6th ed. 2011).



recessions as learning tools, and it suggests that there may be significant unintended consequences arising from the dissemination of artificially inflated law school statistics. Finally, Part IV will take a pragmatic approach and consider an uneasy question: What would happen if current or potential students represented themselves to schools in the same way schools did to them?

## II. LAW SCHOOL<sup>43</sup>

### A. *Why Go to Law School?*

Students choose to attend law school for various reasons.<sup>44</sup> Some are attracted to “eye-popping salaries”<sup>45</sup> or “the drama of shows such as *Law and Order* . . . .”<sup>46</sup> Others are drawn to social justice or public service, and some simply thrive on the “intrigue and competition” associated with the industry.<sup>47</sup> Still others have visions of one day making partner,<sup>48</sup> and some attend law school simply because they do not know

43. Lawyers are all right, I guess—but it doesn’t appeal to me . . . . I mean, they’re all right if they go around saving innocent guys’ lives all the time, and like that, but you don’t *do* that kind of stuff if you’re a lawyer. All you do is make a lot of dough and play golf and play bridge and buy cars and drink Martinis and look like a hot-shot. And besides. Even if you *did* go around saving guys’ lives and all, how would you know if you did it because you really *wanted* to save guys’ lives, or because you did it because what you *really* wanted to do was be a terrific lawyer . . . ? How would you know you weren’t being a phony? The trouble is, you *wouldn’t*.

Holden Caulfield, in J.D. SALINGER, *THE CATCHER IN THE RYE* 172 (1951).

44. See, e.g., ANNE MCGRATH & THE STAFF OF U.S. NEWS & WORLD REPORT, *ULTIMATE GUIDE TO LAW SCHOOLS* v–viii (Brian Kelly ed., 2d ed. 2006).

45. See *id.* at v. In at least one economist’s opinion, top attorneys must *spend* more than other professionals, as well. See ROBERT H. FRANK, *THE ECONOMIC NATURALIST* 137–39 (2007). In answering the question, “Why do lawyers spend more on cars and clothing than college professors with the same income?” Professor Frank explains:

[T]here is a positive link between how much money people earn and how much they spend. There is also a positive link between people’s level of talent and the salary they command in competitive labor markets. Together, these relationships imply a positive link between how talented people are and how much they spend on cars and clothing. So one can make a crude guess about how talented a person is by looking at the kind of clothing he wears or the kind of car he drives.

*Id.* at 138. In short,

Lawyers . . . face greater pressure to spend on cars and clothing because it is more costly for them to send misleading signals about how good they are. A lawyer who failed to match his colleagues’ spending would appear less able than he really was, just as a dog that failed to raise its hackles in battle would appear misleadingly small.

*Id.* at 139.

46. MCGRATH, *supra* note 44, at v.

47. *Id.* at vi.

48. See *id.* Graduates who secure jobs at top firms—that is, “[t]hose who . . . end up with a fancy paycheck . . . are apt to work into the wee hours, researching case law and statutes, and then drafting memos for the partners (who are doing the interesting work).” *Id.* McGrath describes

what else to do.<sup>49</sup> Regardless of one's motivation for becoming a lawyer—or the downsides associated therewith<sup>50</sup>—one constant remains: To become a licensed attorney, one must first obtain the law degree.<sup>51</sup> That said, perhaps the most profound advice for those who have decided to pursue the juris doctor, but have not yet matriculated, is this: “[D]o yourself a big favor: don’t go get a degree because you think that will guarantee you a job! No, mon ami, it will not.”<sup>52</sup>

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*partnership* as “the carrot dangled seven or eight years down the line that confers a share of the firm (and even more money) . . . [.]” but she acknowledges that making partner “comes less easily than it once did, as the ranks of young associates have swelled and as firms have created alternative salaried partnership tracks.” *Id.* In fact,

[a]ccording to John Heinz and Robert Nelson, Northwestern professors who have studied the changing career paths of Chicago attorneys for the American Bar Foundation, only sixteen percent of lawyers surveyed in 1995 who had started out at a large law firm had made full partner at the firm and stayed, compared with thirty-five percent in 1975 . . . .

*Id.*

49. *See id.* at v. Deborah Post, former co-chair of the committee on admissions for the Society of American Law Teachers, explains that many applicants are “woefully uninformed about what the practice of law is like.” *Id.* Michael Young, former dean of the George Washington University Law School and current president of the University of Washington, says that, “Much too often, [students] stumble into the law because they don’t know how to find a job.” *Id.*

50. Choosing to become a lawyer is “no idle question, given the impact choosing law will have on your life.” *Id.* Several studies have suggested that attorneys are among the least happy people: “A 1990 analysis of data on 104 different occupations by researchers at Johns Hopkins University . . . found that lawyers were 3.6 times as likely as the general working population to suffer from major depression.” *Id.* at vi. More recent data suggests this remains true. *See, e.g.,* Debra Cassens Weiss, *Lawyer Depression Comes Out of the Closet*, ABA JOURNAL (Dec. 13, 2007), [http://www.abajournal.com/news/article/lawyer\\_depression\\_comes\\_out\\_of\\_the\\_closet](http://www.abajournal.com/news/article/lawyer_depression_comes_out_of_the_closet) (“Lawyers suffer greater rates of depression and alcohol abuse than the general population . . .”). *But cf.* Debra Cassens Weiss, *Law Profs, Judges Make List of Best Paying Lifestyle Jobs*, ABA JOURNAL (Jan. 4, 2012), [http://www.abajournal.com/news/article/law\\_profs\\_judges\\_make\\_list\\_of\\_best\\_paying\\_lifestyle\\_jobs](http://www.abajournal.com/news/article/law_profs_judges_make_list_of_best_paying_lifestyle_jobs) (“If you are looking for a job that pays the most for the least amount of work, consider becoming a law professor, judge or magistrate. All three careers made a list of jobs that pay above average but require fewer hours than average.”).

51. Beyond the obvious costs associated with attending law school—tuition, books, and housing—there are more subtle ones, such as the cost of the undergraduate degree (a prerequisite to attending law school, and one for which some students may remain indebted), and the cost of living associated with the area in which one attends law school. *See* McGRATH, *supra* note 44, at 1–14 (“Choosing the Right Law School”).

52. BOLLES, *supra* note 5, at 110 (“You would weep! [Those unable to find jobs after getting a degree] are bitter (often), angry (always), and disappointed in a society which they feel lied to them. They found there was no job that went with that degree. They feel lied to, by our society and by the experts, about the value of going back to school, and getting a degree in this or that ‘hot’ field. Now that they have that costly worthless degree, and still can’t find a job, they find a certain irony in the phrase, ‘Our country believes in getting a job by degrees.’ If you already made this costly mistake, you know what I mean.”).

### B. *It's A Business, Baby*<sup>53</sup>

Choosing to attend law school<sup>54</sup> can, and in many respects, should, be viewed as a business decision that takes into account costs of earning the degree and anticipated future benefits from pursuing the degree.<sup>55</sup> It can be a terrifically expensive endeavor, and, with law school guides touting phrases like, “You just cannot overestimate the importance the prestige of the degree has for your life,” and, “If you have a choice between a top-15 or a second-tier school, you’re crazy not to go to the top school,”<sup>56</sup> it is no wonder that choosing if—and ultimately, where—to attend school can be a complicated and stressful process. Indeed, “Law is no longer a profession—it’s a business. The number one priority is profits-per-partner.”<sup>57</sup> This daunting and still developing new reality is due in part to many significant changes in the legal economy.

#### 1. CHANGES IN THE INDUSTRY

The industry that is law school is not isolated.<sup>58</sup> “Legal education has always been shaped by the underlying economic realities of the educational system and the legal profession.”<sup>59</sup> In the 1980s and ’90s, for instance, “most law schools could promise their applicants excellent job prospects even if they did not have programs in place to impart practical skills.”<sup>60</sup> This stemmed from law firms’ “apparently insatiable demand[ ] . . . for the annual crop of warm bodies.”<sup>61</sup> The economic

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53. Borrowed from the late Al Davis, owner of the National Football League’s Oakland Raiders, whose motto was the simple and direct, “Just win, baby.” See Mike Puma, *Just Do It, Baby* (SportsCentury Biography), ESPN CLASSIC, [http://espn.go.com/classic/biography/s/Davis\\_Al.html](http://espn.go.com/classic/biography/s/Davis_Al.html) (last visited Jan. 27, 2013). Perhaps law schools and potential law students can benefit from Mr. Davis’s straightforwardness: Though law is in many ways a noble profession, it remains—at bottom—a business, baby. See, e.g., Andrew P. Morriss, *The Market for Legal Education and Freedom of Association: Why the “Solomon Amendment” is Constitutional and Law Schools Are Not Expressive Associations*, 14 WM. & MARY BILL RTS. J. 415, 417 (2005) (“Legal education must be considered as a business.”).

54. Or any graduate school.

55. See Velshi, *supra* note 1 (explaining the concept of ROI).

56. See McGRATH, *supra* note 44, at 2–3. These quotes are offset and in larger font than the main text; they are impossible to miss.

57. *Id.* at vii; see also Richard A. Matasar, *The Two Professionalisms of Legal Education*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 99, 103 (2001) (then-Dean Matasar explains that legal education and business are “inextricably linked. Simply put: [The dean’s] job is running a business[.]” Matasar acknowledges the “dual nature of the law school business[.] [Law schools] both sell education to students and ‘sell’ [its] graduates to employers as a particular brand of lawyer.”).

58. See generally Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 598–608 (2010).

59. *Id.* at 598.

60. *Id.* at 602.

61. *Id.* at 601. This demand, Thies explains, results from the traditional large law firm model, in which

reality thus became that employers were “in a poor position to demand that their new hires possess training in practical skills. Instead, the imperatives of the job market meant that ‘an emphasis on convincing or enticing interested applicants to join the organization . . . replaced selection through evaluation of paper credentials.’”<sup>62</sup>

## 2. EFFECTS OF THESE CHANGES

One result of law schools’ ability both to attract a seemingly endless lot of students, and to virtually guarantee employment after graduation was that “law school[s] could continue to raise tuition as the price for access to this job market without any corresponding obligation to improve [their] training, and the students would still come.”<sup>63</sup> Law firms

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law firms maintain a leveraged ratio of associates to partners, sometimes employing as many as five non-equity lawyers for every equity partner. With about one-third of the revenue from each non-equity lawyer’s billable hours translating into profit, this model maximizes a firm’s profits per partner. For every new associate a law firm hires, profits increase, at least as long as there is enough work to keep everyone busy.

*Id.* at 600. The problem with this “engine for prosperity” is that, “[a]s younger lawyers move up the ranks, many of them must leave the firm to maintain the pyramid structure and the high profits. Firms using this model thus need to constantly hire a large number of new associates to replace the attorneys that leave the bottom of the pyramid.” *Id.* At the same time, though,

a firm cannot scare away young associates too early, or it will not earn back the investment it has made in hiring and training the young lawyer. To solve this problem, the pyramid model must hold out a credible promise of promotion to partner for a certain number of associates. Because the number of promotions required to make such a promise credible usually exceeds the number of partners who wish to retire or leave, law firms using this model tend to grow over time. . . .

[T]o keep a constant ratio of associates to partner while still promoting the requisite number of associates, law firms must engage in exponential growth.

*Id.* The end result? “[T]he pyramid model causes law firms to engage in intense competition for top graduates of law schools, including ever-expanding associate salaries and lavish summer programs.” *Id.* at 601; see also Michael H. Trotter, *A Pig in a Poke? The Uncertain Advantages of Very Large and Highly Leveraged Law Firms in America*, in *RAISE THE BAR: REAL WORLD SOLUTIONS FOR A TROUBLED PROFESSION* 33, 35–37 (Lawrence J. Fox ed., 2007) (listing many of the largest 200 firms in the United States with their 1950 and 2004 leverage ratios, and noting that “most of the firms listed had grown by at least 1,000 percent and some a great deal more[,]” and that “[l]everage ratios increased for most of the firms in the range of 100 to 200 percent”).

62. Thies, *supra* note 58, at 602 (quoting Abbie Willard Thorner, *Legal Education in the Recruitment Marketplace: Decades of Change*, 1987 DUKE L.J. 276, 280 (1987)).

63. *Id.* A collection of investors (law students) willing to pay more and more money (tuition) to an institution (law school), believing they will benefit through employment prospects or future income (ROI), but where there is no corresponding increase in the value of the underlying asset (the degree)? Conceptually, this sounds eerily familiar, and this may prove to be an unsustainable business model. See, e.g., Alex Altman, *A Brief History of Ponzi Schemes*, TIME MAGAZINE (Dec. 15, 2008), <http://www.time.com/time/business/article/0,8599,1866680,00.html> (“As long as new investment continued to come in the door, the earlier adopters reaped fat rewards; once markets tumbled and investors withdrew, however, the whole thing collapsed like a house of cards.”). By no means am I insinuating that law schools are Ponzi schemes—they are not. I mean only to suggest that, like the Ponzi scheme, we may find ourselves currently operating in an unsustainable

“simply could not hire enough qualified applicants, and the hiring market swung to favor students seeking jobs. With too few law students to go around, employers of all kinds were hard pressed to hire enough students.”<sup>64</sup> One may suspect that the then-existing reality<sup>65</sup> of the legal economy was unsustainable, and the state of the current legal economy may be vindication that this sentiment is correct.<sup>66</sup> Beyond mere intuiti-

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system. In its simplest form, the scheme involves investors contributing money in an effort to earn a positive ROI (and for a while they must, lest the scheme could not exist), but there is no increase in wealth due to the underlying investment, itself—money is simply redistributed from new investors to existing ones (hence the reason the scheme will inevitably collapse under its own weight). The virtual guarantee that law students would be employed, and at robust salaries, was the reality of the legal economy in the 1980s and '90s. *See* Thies, *supra* note 58, at 602. This reality—that students would unceasingly enroll in law school and pay for a degree that fundamentally may have been worth less than its perceived value—is a major contributor both to the state of the current legal economy and the fact that, because law schools “shaped their curricula to respond to the needs of the corporate practice of large law firms,” young lawyers gained little practical skills in school. *See id.* at 601–08; *see also* JOHN ALLEN PAULOS, A MATHEMATICIAN PLAYS THE STOCK MARKET 93 (2003) (“[T]he number of people needed to keep the pyramid growing and the money coming in increases exponentially and soon becomes difficult to maintain. . . . The system collapses under its own weight when enough new people can no longer be found. . . . The logic of pyramid schemes is clear, but people generally worry only about what happens one or two steps ahead and anticipate being able to get out before a collapse. It’s not irrational to get involved if you are confident of recruiting a ‘bigger sucker’ to replace you.”).

64. Thies, *supra* note 58, at 601. Then-Assistant Dean Abbie Thorner of Georgetown University Law Center described the changing dynamic in recruitment as follows:

With a questioning of the old system has come an increased assertion of competitiveness. Employers of all sizes and types vie for the best and brightest in the second- and third-year classes of law schools across the nation. No longer is on-campus law school recruiting the domain solely of the large firm or government agency. Within the last decade, medium and smaller firms, public interest organizations, corporations, and businesses have arranged interview dates nine to twelve months in advance of law students’ employment availability. More and more employers are requesting interviews with or direct contact from students at law schools of all sizes, geographic locations, and reputations. The recruitment process is no longer an intrusion into the academic calendar to be borne solely by a few select law schools.

Thorner, *supra* note 62, at 280.

65. That is, “Come to law school, get a job!”

66. *See, e.g.,* Jordan Weissmann, *What Do Lawyers and Bankers Have in Common? They Lost Jobs in 2011*, THE ATLANTIC (Jan. 10, 2012), <http://www.theatlantic.com/business/archive/2012/01/what-do-lawyers-and-bankers-have-in-common-they-lost-jobs-in-2011/251130> (“Lawyers and Wall Street financiers are members of an exclusive club: The shrinking white-collar industry. . . . [T]he job losses might also speak to fundamental changes in job sectors that traditionally absorb highly educated Americans.”). More somberly, for those still navigating the current legal sea, Weissmann continues:

The fact that the world might not need as many investment bankers and insurance brokers isn’t a problem per se. But the fact that it could need fewer lawyers is. Outside of a few elite MBA programs, not many people get a degree specifically to become the next Will Emerson. But roughly 45,000 students do graduate from law school each spring. Most of them have taken on significant debt. And despite the old saw about being able to “do anything” with a law degree, they don’t have the specific technical or quantitative skills to go into faster growing fields. While the

tion, a discussion about labor market economics and its effect on legal education and the profession will be helpful toward understanding the current legal economy, the problems we are now facing, and, hopefully, it will help lead us to viable, long-term solutions.

### III. ECONOMICS AND THE ECONOMY

#### A. Supply and Demand

The function of nearly all markets can be described by a simple supply and demand model,<sup>67</sup> and the market for labor is no exception.<sup>68</sup> Supply and demand dictates that, as the price of a good or service increases, the quantity demanded of that good or service decreases.<sup>69</sup> Applied to the labor market, *price* refers to *wage*,<sup>70</sup> and *quantity*

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overall unemployment rate for lawyers is a microscopic 2.1%, that doesn't take into account the trouble recent graduates are facing to find work that will soon pay off their debt. The industry is entering a period where it will be well oversupplied with talent. Unless a whole lot of old lawyers start retiring ASAP, that situation probably won't change.

*Id.*; see also *supra* note 64 (describing the changing dynamic in legal recruitment). *But cf.* Debra Cassens Weiss, *31 Percent of Lawyers Surveyed Expect to Make Legal Hires in the Next Three Months*, ABA JOURNAL (Jan. 3, 2012), [http://www.abajournal.com/news/article/31\\_percent\\_of\\_lawyers\\_surveyed\\_expect\\_to\\_make\\_legal\\_hires\\_in\\_the\\_next\\_three](http://www.abajournal.com/news/article/31_percent_of_lawyers_surveyed_expect_to_make_legal_hires_in_the_next_three) ("A survey of 200 lawyers at law firms and corporations found that 31 percent expect to hire legal personnel in the first quarter of [2012]. The survey . . . shows an increase in expected legal hiring over the last quarter, when 25 percent of the respondents expected to add legal jobs . . . ." Less auspicious for new graduates, however, is the fact that "[l]aw firms continue to focus on hiring senior and partner-level lawyers with substantial books of business and expertise in high-demand practice areas . . . .").

67. "[T]he famous English historian Thomas Carlyle once sneered, 'Teach a parrot the terms 'supply and demand' and you've got an economist.'" FLYNN, *supra* note 3, at 151. Incidentally, my undergraduate degree is in economics, and I have a special fondness for pithy comments about economists (as I do for those about lawyers). Here, the quip was in light of the fact that, while supply and demand is a model of how markets function, "not everything in life is a market[.] . . . [yet] sometimes it seems that economists try to explain everything using supply and demand." *Id.* Mr. Carlyle's comment notwithstanding, labor *is* a market, and it remains subject to the ubiquitous forces of supply and demand. See *id.* at 109–11, 151–53.

68. See *id.* at 109–11.

69. *Id.* at 153 ("Prices have an *inverse relationship* with the quantity demanded. In other words, the higher the price, the less people demand . . . ."). To be precise, I should note that not all goods and services operate according to the general principle that, as prices go up, quantity demanded goes down. Certain items, such as the so-called *Veblen Good*, may operate in a manner that appears counterintuitive: As the price for the item rises, demand for that item actually increases. See Samuel Bowles & Yongjin Park, *Emulation, Inequality, and Work Hours: Was Thorsten Veblen Right?*, 115 ECON. J. F397 (2005), for an informative, and highly technical, discussion of "Veblen effects" in the workplace and their impact on hours worked.

70. "Wages are the price employers must pay workers for their labor. Unlike other prices in the economy, people are particularly emotionally attached to wages and how they change over time." FLYNN, *supra* note 3, at 109; see also GEORGE A. AKERLOF & ROBERT J. SHILLER, *ANIMAL SPIRITS* 111 (2009) ("[M]oney wage rigidity occurs fundamentally because workers, and also employers, think that money wage cuts are unfair.").

*demand* refers to the *quantity demanded for labor*.<sup>71</sup> As is the case with any given supply and demand curves, “market forces adjust the market until the price and quantity correspond to where the demand and supply curves cross. When they reach that point—the market equilibrium—the price and quantity don’t change. They stay right there as long as the demand and supply curves don’t move.”<sup>72</sup> In other words, market forces<sup>73</sup> dictate wages and—all things equal—wages will gravitate toward, and remain at, this equilibrium.<sup>74</sup>

### B. *The Legal Job Market*

Prior to the recession, “starting salaries for associates at large law firms stabilized around \$160,000 a year . . . .”<sup>75</sup> With this equilibrium came the new reality that “many prospective law students expect[ed] to be able to earn a comparable amount.”<sup>76</sup> In fact, “only 23% of the graduates of the class of 2008 started with such a high salary, including only

71. See FLYNN, *supra* note 3, at 109–10.

72. *Id.* at 168.

73. That is, the supply of, and demand for, labor.

74. See *id.*; see also *id.* at 166 (“The market equilibrium is called a *stable equilibrium* because no matter where the demand and supply model starts off, it always gravitates back to the market equilibrium. This is very nice because it means that markets are self-correcting, and if you know where the demand and supply curves are, you know where prices and quantities end up.”). Where, for example, wages for attorneys are artificially inflated (that is, not at equilibrium), the supply of labor (lawyers seeking jobs) exceeds the demand for labor (firms looking to hire), and there will be excess supply; that is, unemployed attorneys. See *id.* at 166–67.

75. VALUE PROPOSITION, *supra* note 2, at Part II; see also Press Release, Nat’l Ass’n for Law Placement (NALP), *Salaries at Largest Firms Up Again* (Aug. 21, 2008), available at <http://www.nalp.org/salariesatlargestfirmsupagain>. NALP’s Press Release explains that \$160,000 was the going rate in large cities such as Boston, Chicago, Washington, D.C., and New York, but this was not the case everywhere:

[M]edians in areas such as Columbus, Detroit, Hartford, Indianapolis, Kansas City, Portland, OR, and St. Louis, ranged from \$88,500 to \$107,500. Contrasts between large cities and smaller metropolitan areas within the same state are also evident. For example, in firms reporting from areas in California outside Los Angeles, Orange County, San Diego, Sacramento, and the San Francisco Bay area, the first-year median was \$103,500 [sic]. In Virginia outside of Northern Virginia, the median was \$81,000.

Press Release, NALP, *supra* note 75.

76. See VALUE PROPOSITION, *supra* note 2, at Part II. The excessive number of students seeking the juris doctor came to a head for at least one law school. In a letter to students admitted to begin Fall 2009, Patricia White, Dean of the University of Miami School of Law, explained:

Every year our Admissions Office uses our past experience with acceptance rates to decide how many students to admit. In these economically troubled times past experience has turned out to be a poor guide. An unprecedented percentage of applicants admitted to the University of Miami Law School have accepted our offer. This will give us a larger than optimal first-year class. Accordingly we are offering an incentive to defer admission until Fall 2010.

Memorandum from Patricia White, Dean, University of Miami School of Law, to Students Admitted to Begin Fall 2009 (July 2009) (on file with author, and transcript available at <http://>

37% of those who went into private practice[.]”<sup>77</sup> while about 42% “started with an annual salary of less than \$65,000.”<sup>78</sup> Compounding the

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above<sup>thelaw.com/2009/07/university-of-miami-law-school-defers-11s-this-is-not-a-joke</sup>). In spectacularly honest fashion, Dean White continued:

While I would like to believe that this year’s elevated acceptance rate reflects the great sense of excitement about the Law School and its future . . . I fear that some of it may be related to the shortage of jobs in the current economy. If this describes your motivation for going to law school I urge you to think hard about your plans and to consider deferring enrollment . . . [I]n these uncertain and challenging times the nature of the legal profession is in great flux. It is very difficult to predict what the employment landscape for young lawyers will be in May 2012 and thereafter.

*Id.* In hindsight, many students may wish they had taken advantage of Dean White’s foresight and accepted the Law School’s deferral package or altered plans to attend law school altogether. The writing seemed to be on the wall, yet we kept coming.

77. VALUE PROPOSITION, *supra* note 2, at Part II. Notwithstanding the ABA’s report, the notion that 23%—nearly one in four—of 2008 law school graduates earned around \$160,000 per year seems unlikely. *See, e.g.,* Catherine Rampell, *The Two-Track Lawyer Market*, N.Y. TIMES, (July 26, 2010), <http://economix.blogs.nytimes.com/2010/07/26/the-two-track-lawyer-market/> (describing how, despite the fact that “The Association for Legal Career Professionals released its annual report . . . on employment and salaries for new lawyers[.] . . . few knowledgeable observers put much stock in [this data.]” Rampell explains: “Salaries for first-year lawyers seem to congregate in two camps: those who earn about \$45,000 to \$65,000 a year . . . , and those who earn about \$160,000 a year . . . . Very few newly minted lawyers actually receive “average” or even median pay. . . . Besides producing a nifty statistical illusion, this bimodal pay structure[ ] and the very stark choice it requires law students to make early in their career[ ] has major implications for what America’s current law students do with their lives.” Quoting Elie Mystal, Rampell concludes: “A lot of wanna-be lawyers claim that they don’t even want to make \$160K. Fine. But understand the curve. If you don’t make \$160K, it’s not likely that you’ll make just a little bit less—say, \$120K. It’s not likely that you’ll make the average; it’s not even likely that you’ll make the median. If you don’t win the \$160K lottery, chances are you’ll be clumped into the left-hand side of the curve, earning somewhere between \$30,000 and \$60,000 a year. That’s the kind of pay that a lot of people can get *without* three years of post-graduate education and six figures of debt.”).

78. VALUE PROPOSITION, *supra* note 2, at Part II. The ABA Commission explains why this figure may be alarming:

Dean David Van Zandt of Northwestern Law School estimates that to make a positive return on the investment of going to law school, given the current costs, the average law student must earn an average annual salary of at least \$65,315. As the data . . . show, however, over 40% of law school graduates have starting salaries below this threshold. Thus, many students start out in a position from which it may be difficult to recoup their investment in legal education.

*Id.* at Part III. Dean Van Zandt’s estimate is

based on the assumption that students would make \$60,000 per year without going to law school, that law school tuition is \$30,000, that the student works for thirty years as a lawyer, and that the discount rate is 5%. His estimate does not take into account the opportunity cost of three years of foregone income, nor does he consider the cost of debt service on law schools loans.

*Id.* at n.12. This \$60,000 per year salary figure for college graduates who choose not to go to law school appears a bit inflated, which has the effect of suggesting a shorter time period (or lower salary or both) than one may actually need to “break even” on the law degree. *See, e.g.,* Blake Ellis, *Class of 2011: Your Paychecks Will Be Bigger*, CNN MONEY (Feb. 10, 2011), [http://money.cnn.com/2011/02/10/pt/college\\_graduates\\_salaries/index.htm](http://money.cnn.com/2011/02/10/pt/college_graduates_salaries/index.htm) (“Students who will graduate this spring are receiving job offers with starting salaries averaging \$50,034 per year, up



situation, “the recent economic downturn will likely make legal education even more expensive. Endowment losses, declining state support, and difficulties in fundraising have hit law schools hard. Consequently, most public law schools are raising tuition this year by 10-25%.”<sup>79</sup> Thus, the average student considering enrolling in law school now “should . . . expect to graduate with debt well in excess of \$100,000,” while “prospective students may have fewer resources from savings, family assistance, or other sources to help defray the cost, even as financial aid assistance declines.”<sup>80</sup> Students are “competing for half as many jobs at top law firms”; recruitment in many parts of the job market is also declining; and many recent graduates who are “lucky enough to find employment likely will collectively have lower salaries than their predecessors.”<sup>81</sup> The dismal state of our legal economy can be roundly summarized: “In short, the job market is more challenging than it has been in many years, as well-paying jobs are in short supply.”<sup>82</sup>

### C. What Can We Learn?

#### 1. RECESSION: LOOKING BACKWARD TO LOOK FORWARD

On the macro level, recessions<sup>83</sup> generally “begin with what economists like to call *shocks*—unexpected bad events like terrorist attacks, natural disasters, the introduction of bad government policies, or sudden

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3.5% from last year, according to a survey from the National Association of Colleges and Employers.”); *Fast Facts*, NATIONAL CENTER FOR EDUCATION STATISTICS (2011), <http://nces.ed.gov/fastfacts/display.asp?id=77> (median annual salary in 2009 for college graduates ages 25-34 was \$51,000 for males and \$40,100 for females).

79. VALUE PROPOSITION, *supra* note 2, at Part I. Not all schools, however, raised tuition. See Elie Mystal, *Law Schools Join the Ranks of Institutions Averse to Profiteering During a Rough Economy*, ABOVE THE LAW (Feb. 24, 2011), <http://abovethelaw.com/2011/02/law-school-joins-ranks-of-institutions-adverse-to-profiteering-during-a-rough-economy> (stating that the law schools at the Universities of New Hampshire, Maryland, and Miami (FL) would not be raising tuition for the following academic year).

80. VALUE PROPOSITION, *supra* note 2, at Part I.

81. *Id.* at part II.

82. *Id.*

83. “[T]hose periods of time during which the economy’s output of goods and services declines.” FLYNN, *supra* note 3, at 97. Most people who work for a living

despise recessions because of the high toll they exact in human suffering. That’s because when output falls, firms need fewer workers. The typical result is massive layoffs, which cause significant increases in unemployment. In large countries like the United States, millions of workers lose their jobs, as well as their ability to support themselves and their families.

*Id.*; see also James G. Leipold, *The Changing Legal Employment Market for New Law School Graduates*, THE BAR EXAMINER, Nov. 2010, at 14–15, available at [http://law.syr.edu/\\_assets/documents/professional-and-career-development/James%20Leipold%20Article.pdf](http://law.syr.edu/_assets/documents/professional-and-career-development/James%20Leipold%20Article.pdf) (“The entry-level job market for new law school graduates remains constrained at the present time, and history will show that at least three graduating classes had employment opportunities that were limited by the recession of 2008.”).

spikes in the cost of important natural resources like oil.”<sup>84</sup> Economies also go through “alternating periods during which the output of goods and services expands and then contracts”—the *business cycle*.<sup>85</sup> Whatever the cause of an economic downturn, “[w]hen aggregate demand falls off due to an economic shock, firms lower prices to make sure they sell off their outputs.”<sup>86</sup> The result is twofold: First, prices throughout the entire economy fall, and second, the economy will eventually again produce at full-employment output.<sup>87</sup> For this process to work most efficiently, “prices must be able to change quickly; if they can, the economy very quickly returns to [full-employment output]. If, however, price adjustments are slow, the economy may produce less output than [full-employment output] for a significant amount of time.”<sup>88</sup> In other words, if prices do not adjust quickly, the result is a recession.<sup>89</sup> And—until prices *do* adjust—“the recession lingers.”<sup>90</sup>

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84. FLYNN, *supra* note 3, at 97.

85. *Id.* at 98 (“The alternating pattern of economic expansion and contraction . . . is often called the *business cycle* because businesses are so greatly affected by the changes in output.”).

86. *Id.* at 100. “Aggregate demand” is the total demand for goods and services in an economy. *Id.* “Prices,” as applied here, means the price for legal services. “Output,” as applied here, refers to legal services.

87. *Id.* “Full-employment output” does *not* mean “zero unemployment.” Flynn explains:

[D]on’t make the mistake of thinking that full employment is the same thing as having a zero unemployment rate. Even when everyone who wants a job can get one, there will always be some unemployment as people voluntarily quit one job to search for a better job. For the duration of their job search, these people are counted as unemployed.

*Id.* at 99. *Full-employment output*, represented by the symbol  $Y^*$ , is a metric economists use to measure how well an economy should be doing: “The idea of full-employment output revolves around the concept of *full employment*, by which economists mean a situation in which everyone who wants a full-time job can get one. *Full-employment output* is how much output is produced in the economy when there’s full employment in the labor market.” *Id.*

88. *Id.* at 101.

89. *Id.*

90. *Id.* Flynn explains that, after an economic shock, it is *price adjustments* that tend to return an economy to producing at full-employment output. *Id.* at 100. That is, “*price adjustments*—not the president, and not the chairman of the Federal Reserve Board” tend to lead the economy to full-employment output: “After all, what does any business do when it can’t sell off everything it’s producing at the prices it’s currently charging? It has a sale. It lowers prices. The lower prices attract more buyers, and soon the business is able to sell off the rest of its output.” *See id.* We are left in a perplexing situation: In theory, the law firm—a business—should need to lower prices after an economic shock to continue to attract clients. In fact, “In recent years, pressure from clients for discounts has made it increasingly difficult for law firms to increase their lawyers’ fees across the board. Hourly rates for partners rose by an average 3% in 2009 and 2010, and 2.3% [in 2011], compared with an 8% increase in 2008 . . . .” Vanessa O’Connell, *Big Law’s \$1,000-Plus an Hour Club*, WALL STREET JOURNAL (Feb. 23, 2011), <http://online.wsj.com/article/SB10001424052748704071304576160362028728234.html> (noting that “[a] few pioneers had raised their fees to more than \$1,000 an hour about five years ago, at the peak of the economic boom. But after the recession hit, many of the rest of the industry’s elite were hesitant, until recently, to charge more than \$990 an hour.”); *see also* Thies, *supra* note 58, at 603 (“The . . . downward pressure on law firm rates has nearly frozen the annual increase in fees upon which law

Economists describe the time period after an economic shock in terms of whether these price adjustments have been made.<sup>91</sup>

## 2. THE SHORT- AND LONG- RUNS

The *short run* refers to the time period during which firms have not yet made price changes in response to an economic shock.<sup>92</sup> The *long run* refers to the time period after which “firms have made all necessary price changes in response to an economic shock.”<sup>93</sup> In the microcosm that is our legal economy, it appears we are floundering somewhere

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firms have come to rely.”). So far, so good. One might presume then, that the market should command similar downward pressure on the cost of tuition and the juris doctor itself—the asset required to enter this market in the first place. Application of the *efficient market hypothesis* may suggest that this presumption is well-grounded. The hypothesis holds that

at any given time, stock prices reflect all relevant information about the stock. . . . In an efficient market, competition among the many intelligent participants leads to a situation where, at any point in time, actual prices of individual securities already reflect the effects of information based both on events that have already occurred and on events which, as of now, the market expects to take place in the future.

PAULOS, *supra* note 63, at 59 (internal quotation marks omitted). Distilled, and applied to the market for legal services, the hypothesis would suggest that the price of the degree (the “security”) reflects information related to the degree, including what the market anticipates will happen and the degree’s resultant potential future value. Naturally, this is an imperfect comparison: The juris doctor does not trade on an open market, there are far greater barriers to entry in the market for graduate degrees than for trading stocks, etc. My point is only that an investor should consider the current price of an asset in terms of its potential future value, and that—so the theory goes—this potential future value is already reflected in the underlying price of the asset. Regardless of the merit in applying the *efficient market hypothesis* to the cost of the law degree, the fact remains that the price of tuition continues to increase:

The cost of legal education has been rising steadily throughout the extended expansion of the legal market during the last thirty years. Beginning in the 1980s, law school tuition has consistently risen at a rate more than two times the rate of inflation. Between 1992 and 2002, inflation was twenty-eight percent, while the cost of legal education rose 134 percent at public schools and seventy-six percent at private schools. Since 2002, tuition has continued to rise anywhere from five to fifteen percent a year.

Thies, *supra* note 58, at 608; accord ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LAW SCHOOL TUITION (1985-2009) (2009), available at [http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats\\_5.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_5.authcheckdam.pdf) (containing tables listing the median and average increases in tuition from the previous year, organized by public and private law schools. Of the twenty-five years listed in each of three different categories (public schools, resident; public schools, non-resident; and private schools), only 2008’s median figure for non-resident students at public schools—at 0%—represented a non-increase in tuition from the previous year); accord Leigh Jones, *As Salaries Rise, So Does the Debt*, NAT’L L.J. (Feb. 1, 2006), available at <http://www.law.northwestern.edu/career/markettrends/2006/m5j365y46.pdf> (noting that law students paid 267% more for their legal education in 2006 than in 1990, yet were earning an average of only 60% more). Wages and employment rates for new law school graduates are falling, yet tuition only continues to rise. Something has to give.

91. FLYNN, *supra* note 3, at 101.

92. *Id.*

93. *Id.* “These definitions are intentionally vague because the speed at which firms adjust prices varies from shock to shock.” *Id.*

between the long and short runs: While lawyer salaries and the price for legal services have experienced downward pressure, the cost of the degree has not only not decreased, or even stayed level, but it continues to rise.

This ever-increasing cost of the degree, the law student's diminished ability to secure post-graduate employment, and the culmination of class action suits against law schools militate mightily toward the conclusion that we have not made "all necessary price changes in response to an economic shock."<sup>94</sup> When students are unable to make economically sound decisions about whether to enter law school, and instead make decisions premised upon purportedly misrepresented statistics and incomplete information, all things are not equal. This lack of honest and accurate data-reporting may well be one of the shocks from which the legal education economy is now recovering. Regardless of its causes, the juris doctor will remain overpriced and overvalued as long as the price of the degree does not accurately reflect its true earning potential. When law schools or potential law students are unwilling to adjust—or when they simply remain blind to—a new economic reality, there may be significant, and largely unintended, consequences.<sup>95</sup>

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94. See *supra* text accompanying notes 91–93.

95. The law of unintended consequences is a term economists use to refer to the situation where, when evaluating a policy, "people tend to concentrate on how the policy will fix some particular problem while ignoring or downplaying other effects it may have." FLYNN, *supra* note 3, at 331 (concluding that "[u]nintended consequences are far too common. Be aware of them whenever a politician tries to persuade you to see things his way. Chances are that he's mentioning only the good results of a certain policy; he may not have even thought about its not-so-good side effects."); see also SUN TZU, ART OF WAR 224 (Ralph D. Sawyer trans., Westview Press 1994) (n.d.) ("Bestow rewards not required by law, impose exceptional governmental orders. Direct the masses of the Three Armies as though commanding one man. Press affairs upon them, do not explain the purpose to them. Compel them with [prospects for] profit, but do not inform them about the [potential] harm."). As I apply the phrase here, I mean to suggest that there may be circumstances in which the potential downsides of a policy—here, the "policy" being one of inflated or misleading statistics related to salary or employment prospects after graduation—are either ignored or underestimated. The dissemination of inaccurate information distorts the market, artificially increases the supply of students (and hence attorneys), and this may lead to a glut of unintended consequences. See, e.g., Lisa van der Pool, *Open Job At Boston Law Firm Pays Just \$10,000 Per Year*, CBS BOSTON (June 4, 2012), <http://boston.cbslocal.com/2012/06/04/open-job-at-boston-law-firm-pays-just-10000-per-year/> (describing a posting on Boston College Law School's Symplicity site for a full-time associate position at a Boston law firm that pays \$10,000 per year—a position for which one of the firm's partners said he received about thirty-two applications); Debra Cassens Weiss, *LSAT Test Takers Decline; Is Law School Tuition Bubble Bursting?*, ABA JOURNAL (Mar. 20, 2012), [http://www.abajournal.com/news/article/lSAT\\_test\\_takers\\_decline\\_is\\_law\\_school\\_tuition\\_bubble\\_bursting/?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=weekly\\_email](http://www.abajournal.com/news/article/lSAT_test_takers_decline_is_law_school_tuition_bubble_bursting/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email) (describing the sixteen percent drop in LSAT takers from the prior year and concluding, "In other words, 2011 may be the beginning of the end of the law school tuition bubble"); Debra Cassens Weiss, *Even at Top Chicago Law Schools, Fewer Grads Go to Law Firms*, ABA JOURNAL (Dec. 19, 2011), [http://www.abajournal.com/news/article/top\\_chicago\\_law\\_schools\\_stats\\_show\\_fewer\\_grads\\_going\\_to\\_law\\_firms/](http://www.abajournal.com/news/article/top_chicago_law_schools_stats_show_fewer_grads_going_to_law_firms/) (describing how, at the

## IV. CONCLUSION

I do not suggest that if law schools began fairly and accurately reporting salary and post-graduation employment statistics, the legal economy would immediately correct itself.<sup>96</sup> This is no panacea, but

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University of Chicago and Northwestern University, there was a decrease of 8.8 and 11 percent, respectively, in law graduates working at law firms after graduation; relating that, while “[t]here are plenty of opportunities for students at the top tier schools,” those students “are displacing graduates from other schools”; and, quoting Indiana University law professor William Henderson, director of the Center on the Global Legal Profession, concluding, “More detailed employment data that will be reported next year is ‘going to be pretty embarrassing for a lot of schools’”); Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES (July 14, 2012), <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html> (describing employment prospects for new graduates: “These numbers are far worse than jobs data going back a generation and should be a deep embarrassment to law schools, which have been churning out more graduates than the economy can employ, indulging themselves in copious revenues that higher tuitions and bigger classes bring in[.]” and concluding, “Most schools and many students have banked on students’ being able to pay back enormous loans with ample salaries, but that flawed model is irretrievably broken. Law schools need to be pragmatic, too, finding ways to ensure that graduates can afford to take jobs where the salary is less important than the impact”); Kevin H. Morse & Barry Chatz, *Bursting our next bubble: The expanding student loan debt crisis*, THOMSON REUTERS NEWS & INSIGHT (Oct. 5, 2012), [http://newsandinsight.thomsonreuters.com/Bankruptcy/Insight/2012/10\\_-\\_October/Bursting\\_our\\_next\\_bubble\\_\\_\\_The\\_expanding\\_student\\_loan\\_debt\\_crisis/](http://newsandinsight.thomsonreuters.com/Bankruptcy/Insight/2012/10_-_October/Bursting_our_next_bubble___The_expanding_student_loan_debt_crisis/) (explaining that, while prior to 1984, “only student loans made by nonprofit institutions of higher education were excepted from discharge[.]” Congress has “slowly whittled away at the dischargeability of student loans culminating in BAPCPA excepting from discharge all ‘qualified education loans’ regardless of whether a nonprofit institution was involved in making the loans[.]” and arguing that Congress must reexamine the nondischargeability of certain student loan debt “in light of [the] growing student loan debt bubble and lenders taking advantage of the security of nondischargeability”); Jones, *supra* note 90 (“[B]eginning lawyers . . . are shouldering proportionately much more debt at graduation than did their predecessors, a situation that some observes fear will lead to more loan defaults . . .”); see also Tyler Kingkade, *Sugar Baby Colleges: 20 Fastest Growing SeekingArrangement.com Schools*, THE HUFFINGTON POST (Jan. 15, 2013), [http://www.huffingtonpost.com/2013/01/15/sugar-baby-colleges\\_n\\_2475001.html](http://www.huffingtonpost.com/2013/01/15/sugar-baby-colleges_n_2475001.html) (describing the growing phenomenon of undergraduate students seeking “sugar daddies” to pay for school. “Women . . . sign[ ] up on the website to be ‘companions’ to wealthy men in order to make some cash to cover the cost of school.” The average co-ed “Sugar Baby receives approximately \$3000 a month in allowances and gifts from her Sugar Daddy, enough to cover tuition and living expenses at most schools[.]” As some women said they “never thought it would come to this[.]” it remains to be seen whether this sort of “companionship” program could take hold at the graduate level). These potentially grave unintended consequences exist in spite of schools’ mandate to “take reasonable steps to minimize student loan defaults . . . .” ABA STANDARDS FOR APPROVAL, *supra* note 12, § 510; see also *id.*, *Interpretation 510-1* (“The student loan default rates of a law school’s graduates, including any results of financial or compliance audits and reviews, shall be considered in assessing the extent to which a law school complies with this Standard.”). The reporting of misleading statistics prevents all things from being equal—it artificially distorts the market, contributes to higher law school enrollment than there would be otherwise, and leads to unintended consequences—simply too many lawyers seeking too few jobs.

96. See, e.g., William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can’t Pay Bills?*, ABA JOURNAL (Jan. 1, 2012), [http://www.abajournal.com/magazine/article/the\\_law\\_school\\_bubble\\_how\\_long\\_will\\_it\\_last\\_if\\_law\\_grads\\_cant\\_pay\\_bills/](http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/) (citing “youthful overoptimism[.]” “bleak job prospects for college grads[.]” and “the entry of several more universities and for-profit businesses into the legal education business” as

honesty in reporting is an excellent starting point. It would allow potential students to make sounder economic decisions that will affect them for the rest of their lives, and it would soften the effects of a market over-saturated with attorneys. In my mind, the answer to certain questions, such as the following, should be obvious: Do law schools truly believe that students considering enrollment in their programs, many of whom will take on tens- and hundreds- of thousands of dollars in debt—and all of whom already have a bachelors degree<sup>97</sup>—are interested in their post-graduate employment prospects at a coffee shop?<sup>98</sup> It may be true that schools are following the ABA's reporting rules or are "following the industry standard."<sup>99</sup> But, for a profession historically lambasted for its purported lack of ethics,<sup>100</sup> and one whose education system is finding itself on the wrong end of multiple class action proceedings, maybe it is time to reevaluate the means by which schools choose to present their data. Perhaps law schools should hold themselves to the same high level of candor they demand from applicants: How would a law school likely react if—while considering or even *after* admitting a student—it subsequently discovered that it had been misled during the

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"some of the root causes for the supply-and-demand imbalance in entry-level lawyers"). *But cf.* Campos, *supra* note 6 ("Law schools . . . make it much harder than it needs to be by publishing misleading data about their employment statistics. Many law schools all but explicitly promise that, within a few months of graduation, practically all their graduates will obtain jobs as lawyers, by trumpeting employment figures of 95 percent, 97 percent, and even 99.8 percent. The truth is that less than half will.").

97. That is, they *already* possess the baccalaureate credentials to get jobs unrelated to law.

98. I love coffee shops, but I do not need to indebt myself over \$150,000 to work at one. Yet, to many law schools, a J.D.-wielding barrista is deemed—seemingly in good conscience—"employed after graduation."

99. See Elie Mystal, *Could Thomas Jefferson School of Law Actually Lose?*, ABOVE THE LAW (June 17, 2011), <http://abovethelaw.com/2011/06/could-thomas-jefferson-school-of-law-actually-lose/>. That "everyone else is doing it" is a pitiful explanation: "Where there are no men, be thou a man." SAUL D. ALINSKY, *RULES FOR RADICALS* iv (Vintage Books ed. 1989) (1971) (quoting Rabbi Hillel).

100. When the lawyers are through  
 What is there left, Bob?  
 Can a mouse nibble at it  
 And find enough to fasten a tooth in?  
  
 Why is there always a secret singing  
 When a lawyer cashes in?  
 Why does a hearse horse snicker  
 Hauling a lawyer away?

The lawyers—tell me why a hearse horse snickers  
 hauling a  
 lawyer's bones.

*The Lawyers Know Too Much*, in CARL SANDBURG, *SELECTED POEMS* 191 (George Hendrick & Willene Hendrick eds., 1996).

application process?<sup>101</sup>

Given the uncertain future lurking ahead of our legal economy and our legal education system,<sup>102</sup> do students wish they could retract their

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101. At my own law school, the likely reaction is decisively clear:

By signing this application, I certify that all the above and supplementary information is correct to the best of my knowledge. I agree to notify the Office of Admissions of any significant changes that might affect the accuracy or completeness of the information in my application or my eligibility for consideration as a prospective student. I understand that failure to respond fully and accurately to the questions contained herein, or to inform the Office of Admissions of any significant changes, may result in denial of my admission, expulsion, revocation of my degree, or other action. I further understand that the School of Law may report to LSAC for investigation any instance of material misrepresentation in the application process . . . .

*First-Year Application for the Full-Time Juris Doctor Program, Fall 2012*, UNIVERSITY OF MIAMI SCHOOL OF LAW, available at <http://www.law.miami.edu/admissions/pdf/2011/2012FirstYearApplication.pdf>. Likewise, the Florida Board of Bar Examiners explains in the *Frequently Asked Questions* section of its website that “Pursuant to rule 3-11 a record manifesting a lack of honesty, trustworthiness, diligence, or reliability may constitute a basis for denial of admission.” *Frequently Asked Questions*, FLORIDA BOARD OF BAR EXAMINERS, <http://www.floridabarexam.org/public/main.nsf/faq.html> (last visited Jan. 27, 2013). The Florida Board of Bar Examiners lists both “[m]aking or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Bar Application” and “[a]cting in a way that] involve[s] dishonest[y], fraud, deceit, or misrepresentation” as factors that “may be considered by the board to be a basis for further inquiry before recommending admission.” *Id.* Clearly, reporting accurate—that is, non-misleading and non-misrepresented—data about oneself is an essential task for potential law students, and one that, when wanting, will come with harsh consequences. Though I have listed as examples both a law school and the Board of Bar Examiners from my own state to demonstrate the critical importance of—and severe penalties for not—reporting accurate data, neither is unique in holding its applicants to a high level of candor. See, e.g., *Applying to Law School: Misconduct and Irregularities*, LSAC.ORG, <http://www.lsac.org/jd/apply/misconduct-and-irregularities.asp> (last visited Jan. 27, 2013) (the Law School Admissions Council explains that “The legal profession requires its members to behave ethically in the practice of law at all times, in order to protect the interests of clients and the public. . . . Misconduct or irregularity in the admission process is a serious offense with serious consequences. Intent is not an element of a finding of misconduct or irregularity. This means that an ‘honest mistake’ is not a defense to a charge of misconduct or irregularity. Misconduct or irregularity is defined as the submission, as part of the law school admission process . . . of any information that is false, inconsistent, or misleading, or the omission of information that may result in a false or misleading conclusion . . .”). We see the following: Law schools expect—and demand—that students are accurate in reporting data about themselves; an “honest mistake” may be no defense for an omission or a misleading statement about oneself; and the failure to abide by these principles may result in the denial of admission, expulsion, or revocation of one’s juris doctor. In short, it is anathema for a student to mislead a school or misrepresent the information upon which law schools base admissions decisions. Hopefully soon, this will become a two-way street.

102. As Elie Mystal comments, “It’s not about winning or losing; it’s about raising awareness of the disingenuous way law schools go about filling up their classes.” Mystal, *supra* note 99; see also Elie Mystal, *Thomas Jefferson Law: Is the Answer Worse Than the Allegations?*, ABOVE THE LAW (July 21, 2011), <http://abovethelaw.com/2011/07/thomas-jefferson-school-of-law-is-the-answer-worse-than-the-allegations/> (“[A]side from Alaburda and TJSL, I don’t think a lot of people care if she wins. I think people care that Thomas Jefferson School of Law and other similar institutions are put on notice that the little game they appear to be playing with their employment

decision to enter law school? For me, saddled in massive debt and with a net worth rivaling my three-digit LSAT score, my answer remains a resounding, “No.” Law school was, and is, the right decision for me: I want to be a lawyer. Like Holden Caulfield describing his dream profession, “I know it’s crazy, but that’s the only thing I’d really like to be. I know it’s crazy.”<sup>103</sup> That said, there exists an enormous and still-unfolding problem in American law schools with—using Mr. Caulfield’s words—*phoniness*. Holden yearned to “stand[ ] on the edge of some crazy cliff” and “catch everybody if they start[ed] to go over— . . . if they’re running and they don’t look where they’re going [he] [had] to come out from somewhere and *catch* them.”<sup>104</sup> It appears now that it is we—the country’s current and potential law students—who need to be caught.

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statistics is getting old. Towards that end, even if it doesn’t make it to the discovery phase, this lawsuit has already forced TJSL to come clean in a direct and embarrassing way about what it’s doing with its post-graduate employment numbers.”).

103. SALINGER, *supra* note 43, at 173.

104. *Id.*